APPENDIX A

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Emma R. Moist, et. al.
Plaintiffs,
v.
Bernard Belk, et. al.,
Defendants.
Civil Action No. 29,165

MEMORANDUM OPINION AND ORDER GRANTING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY JUDGMENT

Dated at Detroit, Michigan this 22nd day of December, 1966.

This action was commenced on November 9, 1966, upon the filing of a complaint which named as defendants twelve individuals, two "alleged corporations" and the Michigan Department of Commerce. Each of the defendants named are alleged in the complaint to have participated at some time at present or in the past in the State court receivership proceedings involving certain real property. Defendants herein are charged with conspiracy to violate and with substantive violations of plaintiffs' Constitutional rights to due process and equal protection as guaranteed by the Fourteenth Amendment. Motions to dismiss were filed on behalf of all defendants and alternative motions for summary judgment were filed on behalf of some of the defendants.

The motions came on for full hearing on December 12, 1966, at which the following uncontested matters were brought to the court's attention. The original petition for receivership was filed by plaintiffs herein or their predecessors in interest (hereinafter referred to as plaintiffs) in the Wayne County Circuit Court on November 22, 1952 which apparently prayed for the appointment of a receiver of two corporations in which plaintiffs claimed some interest and which sought a decree quieting title to certain real property now known in part as Brookdale Cemetery. Those proceedings have continued to date and have involved a vast number of appeals to the Michigan Supreme Court, variously estimated at from twenty-two to thirty-eight, which figures do not include several additional appeals to the recently convened Michigan Court of Appeals, an intermediate appellate court.

The present action was brought to obtain relief from a judgment rendered by the Michigan Supreme Court, reported as *Harvey v. Lewis,* 357 Mich. 305 (1959) which affirmed the appointment of a receiver of two corporations, Brookdale Cemetery Association, a Michigan rural cemetery association and Brookdale, Inc., a Michigan corporation, determined that title to the real property in question was in the receiver of these two corporations and not in plaintiffs, and affirmed the findings of the trial court that the alleged conspiracy and fraud involving the formation of a syndicate, acquisition of the property in question and formation of the corporations involved and conduct of rural cemetery by the cemetery association had not been established by plaintiffs.

One of the grounds urged in the present motions is that the doctrine of res adjudicata must operate to bar this court's consideration of plaintiffs' contentions which were fully litigated in the State court proceedings. At the December 12 hearing, plaintiffs' counsel conceded on the record that the State court had jurisdiction over the subject matter of the receivership and had *in personam* jurisdiction over

the parties therein, all of whom are parties to the present action with the possible exception of the Michigan Department of Commerce. However, plaintiffs contend that the State court judgment is not res adjudicata of the issues determined therein and does not bar this court's consideration of those same issues because the State court judgment is *void* as a matter of law in that it is in direct violation of *State* law and, as such, denies to plaintiffs the equal protection of law as guaranteed by the Fourteenth Amendment.[1]

Plaintiffs' counsel also conceded certain other matters on the record at the December 12 hearing. He stated that his clients had been represented by counsel of their choice during the entire State court proceedings and that they did fail to seek review of the allegedly void 1959 Michigan Supreme Court decision by application to the United States Supreme Court. This failure to seek such review was knowing and deliberate on the part of plaintiffs inasmuch as they were aware then of the same Constitutional issues which they are raising herein, and were advised by their present counsel to seek such ultimate review of the alleged violation of their constitutional rights which they are challenging herein.[2] Furthermore, plaintiffs' counsel also stated

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[1] See Appendix A, attached hereto, containing an excerpt of the transcript of the December 12 proceedings at which plaintiffs' counsel stated his position in this regard on the record.

[2] Plaintiffs' present counsel informed the court on the record at the December 12 hearing that he had carefully followed and studied the State Court proceedings as they progressed because of his great interest in the issues raised therein. Although he stated he had no formal connection with the case at the time of the 1959 Michigan Supreme Court decision, he nevertheless was of the opinion that the decision was unconstitutional and he urged counsel representing plaintiffs at that time to appeal the decision to the United States Supreme Court. Plaintiffs' failure to heed such advice is unexplained on this record, but it is clear that their counsel had been so advised and could have sought such review if he had considered it in his clients' best interests.

that each and every issue which plaintiffs are raising herein either was formally raised in the State court proceedings or could have been raised therein if plaintiffs' counsel had wished to do so.[3]

These facts and circumstances describe the classic situation for the application of the doctrine of *res judicata*. Perhaps the most compelling reason for the use of this doctrine is to bring an eventual end to litigation, so that in the orderly course of judicial administration, issues once litigated and controversies once resolved may not be subsequently reopened. It appears to the court that this is precisely what plaintiffs are attempting to do in this cause, to relitigate claims which have already been decided by the State courts of competent jurisdiction adversely to plaintiffs. Whether, as plaintiffs claim, the 1959 Michigan Supreme Court decision denied them equal protection of the law by incorrectly applying State law is not before the court at this time. If such decision violated plaintiffs' constitutional rights, their only relief would have been to seek direct review in the United States Supreme Court. This procedure they deliberately waived. They cannot now be heard anew on this same claim in federal district court. As the court pointed out in *Rhodes v. Meyer*, 334 F.2d 709 (8th Cir. 1964), cert. denied 379 U.S. 915 (1964), the Civil Rights Act was not intended to allow persons knowledgeable in legal procedures to ignore an opportunity to correct an alleged error and then, in subsequent proceedings, attack the administration of justice.

And apart from the Civil Rights Act, the United States Supreme Court has unequivocally held that the federal

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[3] Plaintiffs' petition for rehearing, formally entitled "motion to vacate", filed in the Michigan Supreme Court subsequent to its 1959 decision, raised the constitutional issues of denial of due process and equal protection.

district courts do not have original jurisdiction to entertain actions brought by litigants defeated in the State courts against successful opponents to set aside the State court judgment as void because of alleged errors in deciding constitutional questions. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

> It affirmatively appears from the bill that the judgment was rendered in a cause wherein the (state) court had jurisdiction of both the subject matter and the parties; that a full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs. . . . If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. . . . Under the legislation of Congress, no court of the United States other than (the United States Supreme) Court could entertain a proceedings to reverse or modify the judgment for errors of that character. . . . To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original. At 415-16.

The doctrine of the *Rooker* case assumes continued validity. See, e.g., *Lavasek v. White*, 339 F.2d 861 (10th Cir. 1965); *Chance v. County Board of School Trustees*, 332 F.2d 971 (7th Cir. 1964).

It is apparent from the above-quoted portion of the *Rooker* decision that its doctrine is fully applicable to the case at bar. In both cases, the action was brought in the federal district court by aggrieved State court litigants to seek relief from an allegedly *void* State court judgment. In both cases, the State court admittedly had jurisdiction over the parties and the subject-matter of the litigation. In both cases, plaintiffs claimed that the alleged errors in the State courts' determination of constitutional questions rendered those judgments *void*. But it is clear from the language in *Rooker*, that such judgments rendered in the exercise of competent jurisdiction are at most erroneous; they are not void, are not subject to collateral attack, and are not open to relitigation in the federal district courts.

In view of the foregoing, it is not necessary to rule on the various other grounds urged in the motions under consideration herein. However, one word might be said with regard to the nature of plaintiffs' complaint which was objected to on the grounds that it failed to comply with Fed. R. Civ. Proc. 8(a). This rule requires a complaint to state "a short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiffs' original complaint consists of ninety-four pages, attached to which are sixty-three exhibits and a subsequently filed amended complaint imposes an additional ten pages thereto. The court agrees that the dismissal of the complaint, as amended, would be proper, as was done in the similar case of *Corcoran v. Yorty* 347 F.2d 222 (9th Cir. 1965), for the reason that the complaint is "so verbose, confused and redundant that its true substance, if any, is well disguised." At 223. However, in the interests of an expeditious determination of this action, and in view of plaintiffs counsel's statements on the record, referred to above, as to the true nature of his claim the court has undertaken herein to decide the matter on the merits.

For the foregoing reasons, it is hereby ORDERED that defendants' motions to dismiss and for summary judgment are GRANTED and that plaintiffs' cause of action be dismissed with prejudice.

/s/ Thaddeus M. Machrowicz,
U.S. District Judge.

Dated at Detroit, Michigan,
this 22nd day of December, 1966.

APPENDIX "A"

EXCERPTS OF PROCEEDINGS HAD ON DECEMBER 12, 1966

Excerpts of proceedings had in the Motion to Dismiss in the above-entitled matter taken before the Honorable Thaddeus M. Machrowicz, District Court Judge, at Detroit, Michigan on Monday, December 12, 1966.

Appearances: Mr. August F. Brandt, appearing on behalf of the plaintiffs; Mr. Arthur M. Lang, appearing on behalf of defendant Lewis; Mr. Albert Sugar, appearing on behalf of defendant Belk; Mr. William Cooney, appearing on behalf of defendant Beattie; Mr. John R. Starrs, appearing in pro per; Mr. C. A. Tsangadas, appearing in pro per; (2) Mr. Sydney List, appearing in pro per; Mr. Ralph McKenney, appearing in pro per; Mr. James M. Wienner, appearing on behalf of the Estate of Wienner; Mr. William R. Rudell, appearing on behalf of the Attorney General.

* * * * *

The Court: I am primarily interested in knowing why this Court has jurisdiction over this matter. What new issues are there that brings this matter now within the jurisdiction of this Court?

Mr. Brandt: I am satisfied—

The Court: Why wasn't something done sooner?

Mr. Brandt: They have been active on this—this thing has been on the griddle continuously for the last fourteen years.

The Court: I mean since the Supreme Court action.

Mr. Brandt: There has been a contest going on right up to the last of—just here about a month ago. I think the last Court of Appeals denied the re-hearing just a little over a month ago.

But the reason we are here, and that is the (3) original jurisdiction of this Court, and there is no question—

The Court: What is the original jurisdiction of this Court, tell me?

Mr. Brandt: Well, the original jurisdiction of this Court is going to come in this way: We don't deny that the State Court had jurisdiction of the subject matter. We don't deny that the State Court had jurisdiction of the parties. But we do say that the original jurisdiction of this Court is being invoked because the State Court had no power to enter an order or judgment or a dictative which under the law of the State of Michigan they could not make.

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United States District Court,
Eastern Division of Michigan—ss.

I, Walter R. Lauckner, one of the Official Court Reporters for the above court, do hereby certify that I recorded stenographically the testimony taken and proceedings had in the above-entitled and numbered cause before the Honorable Thaddeus M. Machrowicz, District Court Judge, at Detroit, Michigan, on December 12, 1966; and that the foregoing and annexed three typewritten pages

constitute a complete and accurate transcript of that portion of the proceedings herein transcribed.

Walter R. Lauckner,
Official Court Reporter,
739 Federal Building,
Detroit, Michigan 48226.

Dated: Dec. 22/66

APPENDIX B

DECREE OF MICHIGAN SUPREME COURT

(#41 April Term 1959)

Sidney M. Harvey, et al., Plaintiffs and Appellees, v. Daniel Lewis, et al., Defendants and Appellees, John R. Starrs, Receiver and Appellee, Ralph W. McKenney, Guardian Ad Litem, Appellant.	Supreme Court No. 48,011 (#41 April Term 1959) Li.14110 pa. 608

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 8th day of December, in the year of our Lord one thousand nine hundred and fifty~~-one~~ nine.

Present the Honorable John R. Dethmers, Chief Justice, Leland W. Carr, Harry F. Kelly, Talbot Smith, Eugene F. Black, George Edwards, John D. Voelker, Associate Justices.

This cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, in Chancery, and having been argued by counsel, and due deliberation having been had thereon; it appearing that the Circuit Court for the County of Wayne, in Chancery, on June 27, 1958, appointed John R. Starrs Receiver of the assets of Brookdale Cemetery Association, a Michigan rural cemetery association, and of Brookdale, Inc., a Michigan corporation, and of certain real estate in the County of Wayne, State of Michigan, description of which is hereinafter referenced; the said Receiver on September 24, 1958 petitioned the said Circuit Court for a Decree of Sale; in connection with said Petition the Circuit Court appointed a Guardian Ad Litem, Ralph W. McKenney, to represent persons who might be interested in the proposed Decree of Sale and who might for any reason be incapable of representing themselves; the said Guardian Ad Litem interposed objections to the proposed Petition for Decree of Sale; the plaintiffs also interposed objections to the Petition for Decree of Sale; the said Petition and Objections thereto came on to be heard on due notice; on October 7, 1958 a Final Decree of Sale was entered in said Circuit Court wherein was described with particularity the land authorized to be sold; the Guardian Ad Litem took general appeal from the Final Decree of Sale; the plaintiffs participated in said appeal as appellants; on Order of this Court the entire proceedings on file in the Circuit Court and the entire transcript of testimony had at the trial of this cause, April-July 1955, were brought up for consideration;

On October 12, 1959, this Court filed its Opinion, to which reference may be had;

On motion of Stanley E. Beattie, attorney for John R. Starrs, Receiver,

It is now Ordered, Adjudged and Decreed by this Court:

A.

That the Final Decree of Sale entered by the Trial Court on October 7, 1958 be, and the same is, hereby modified to provide that existing graves shall not be disturbed, and in all other provisions the said Decree is affirmed;

B.

That the legal title to the land in question is in Brookdale Cemetery Association, a Michigan rual cemetery association, organized under and existing by virtue of C.L. '48 456.101 et seq. (Stat. Ann. 21.871 et seq.), as against any claims of plaintiffs;

C.

That the land in question is subject to the jurisdiction of the Circuit Court for the County of Wayne in the Receivership proceedings therein;

D.

That plaintiffs have no interest of any kind or description in said land as an asset of said Brookdale Cemetery Association, and that the rights of plaintiffs are limited to such as may be possessed by them as stockholders in said Brookdale Inc.;

E.

That the claims of the plaintiffs to ownership of the referenced lands by virtue of constructive trust arising from asserted fraud and conspiracy alleged to have been practiced on plaintiffs, are herewith dismissed for the reasons that the plaintiffs have failed to show any conspiracy

or any fraud as charged, and that in the inception of the plan involving the formation of the syndicate, the acquiring of the property, the formation of a corporation or of corporations, and the conducting of a rural cemetery by Brookdale Cemetery Association, the parties concerned had acted in good faith without any attempt to defraud or deceive the plaintiffs;

F.

That the appellant Guardian Ad Litem and the appellee Receiver and his counsel shall be allowed their proper fees and disbursements to be paid as an expense of the receivership estate of said Brookdale Cemetery Association on proceedings duly noticed in the Trial Court, but that no other costs herein shall be allowed or taxed.

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Justice of the Supreme Court.

/s/ Approved
Leland W. Carr

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the decree entered December 8, 1959 in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court, at Lansing, this 8th day of December, A.D. 1959.

/s/ Donald F. Winters,
Clerk.

(Seal)

APPENDIX C

PLAINTIFFS' PETITION TO VACATE SUPREME COURT OPINION DATED OCTOBER 12th, 1959 (357 MICH. 305) AND DECREE DATED DECEMBER 8th, 1959 FOR WANT OF JURISDICTION

(Excerpts from)

Sidney M. Harvey, et al.,
Plaintiffs-Petitioners,
v.
Charlotte L. Kline, et al.,
Defendants-Respondents,
and
John R. Starrs, "Receiver" et al.,
Claimants-Respondents.

This Petition Relates to No. 48,011

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8. * * * by proceedings hereinabove specified and referred to plaintiffs have been and are deprived of the equal protection of the Laws and of due process of law in violation of constitutional provisions as follows:

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APPENDIX D

ORDER DENYING MOTION TO VACATE

(Calendar No. 48,011)

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 28th day of June in the year of our Lord one thousand nine hundred and sixty-one.

Present the Honorable John R. Dethmers, Chief Justice, Leland W. Carr, Harry F. Kelly, Talbot Smith, George Edwards, Thomas M. Kavanagh, Theodore Souris, Associate Justices.

In this cause a motion is filed by plaintiffs to vacate the decree heretofore entered herein on October 12, 1959 and for other relief, and answers thereto having been filed by defendants, and due consideration thereof having been had by the Court, it is ordered that the motion be and the same is hereby denied.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan; do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 30th day of June in the year of our Lord one thousand nine hundred and sixty-one.

Donald F. Winters,
Clerk.